REMARKS

Claims 1-24 were examined on their merits, while claims 25-42 have been added to the application. Therefore, claims 1-42 are currently pending in the present application.

Art Rejections

1. Claims 1-8, 10-19, and 21-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stimpson et al., U.S. Patent No. 5,551,416 ("Stimpson") in view of Michaels et al., U.S. Patent No. 3,812,854 ("Michaels"). Claims 1, 21, and 23 are independent claims. Claims 2-8 and 10-19 ultimately depend from independent claim 1. Claim 22 depends from independent clam 21. Claim 24 depends from claim 23.

To be an "obviousness" rejection under 35 U.S.C. § 103, the subject matter as a whole would have to have been obvious at the time of the invention to a person having ordinary skill in the art to which the subject matter pertains. The reference must teach every element and recitation of the Applicants' claims to render the claimed subject matter obvious. To establish a prima facie case of obviousness the Examiner must show that the prior art references, when combined, teach or suggest all of the claim limitations. See MPEP § 2143. Applicant respectfully submits that the references cited above by the Examiner fail to teach or suggest all of the claim limitations as set forth in the present application.

Stimpson is deficient with respect to claims 1, 21 and 23 for at least the reasons stated below. Stimpson refers to a nebulizer for use in administering a medicant to a patient. It delivers an aerosoled compound by an atomizing process. It includes a reservoir (L) and a system to deliver the fluid compound in the reservoir. The system includes transducer 60 having an

electric crystal 62, which converts electrical impulses into mechanical vibrations to thereby nebulize the liquid in the reservoir. The nebulizing creates a mist of fluid from the reservoir, which is mixed with airflow and delivered to the patient through a mouthpiece 81.

The Office Action states that item 68 is equivalent to the entry port of claims 1, 21 and 23. The Office Action also asserts that item 68 is an air inlet in its discussed of claim 1 (Office Action dated July 1, 2004, p.2) and again in its discussion of claim 22 (Office Action dated July 1, 2004, p.5). We submit that item 68 in Stimpson is an air inlet for the nebulizer, not an entry port, and there is no liquid connection between item 68 and the fluid reservoir (L).

More importantly, claim 1 requires that the system includes "at least the ejection head is disposed in the air flow path." If the system includes an element 62 "to generate particles of desired size for physical ejection ... from an ejection head of the element," then at least a part of the crystal 62 should be in the airflow path. In Stimpson, crystal 62, is located at the bottom of the reservoir (*FIG. 8a*) and not in the airflow path as is required by claim 1. Further, column 5, lines 11-12 of Stimpson states that "...the crystal is mounted at the bottom of the nebulizing chamber unit 50." Indeed, for the nebulizing effect to operate correctly the crystal 62 must be submerged in the liquid and not in the airflow path as in the present invention. Moreover, it is difficult to see how the "element" from Stimpson (crystal 62) even has an ejection head, which is required by claim 1.

Therefore, because Stimpson is deficient with respect to claims 1, 21, and 23 for at least the reasons stated above, the Examiner must rely on Michaels to compensate for these deficiencies. However, Michaels fails to disclose the identified deficiencies. Based on the above reasoning, we believe that Stimpson in combination with Michaels does not disclose all the

elements of claims 1, 21, and 23, and the claimed subject matter is not obvious over Stimpson in view of Michaels.

Further, Applicants submit that claims 2-8, 10-19, 22, and 23 are patentable at least by virtue of their dependency. The Examiner is therefore respectfully requested to withdraw the rejection as to claims 1-8, 10-19, and 21-24.

2. Claims 9 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stimpson et al., U.S. Patent No. 5,551,416 ("Stimpson"). Applicants traverse these rejections as Stimpson is deficient with respect to claims 1 for at least the reasons stated above. Therefore, the structure disclosed in Stimpson does not render the claimed subject matter of claims 9 and 20 obvious as claims 9 and 20 are patentable at least by virture of their dependency. As such, the Examiner is respectfully requested to withdraw the §103(a) rejection from dependent claims 9 and 20.

New Claims

Claims 25-42 have been added in the present application. Applicants believe that newly added claims 25-42 are fully supported by the specification and are believed to be allowable over the prior art of record.

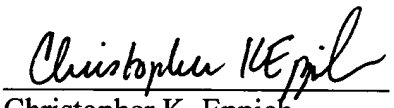
CONCLUSION

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

After the above Amendments, claims 1-42 are still pending in the application, of which claims 1, 21, 23, and 25 are independent claims. Thus, there are 38 total claims and 4 independent claims. Prior to the above amendments, there were 24 total claims and 3 independent claims. Therefore, the fee for 18 additional claims and 1 additional independent claim are believed due.

Applicants hereby petition for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension, It is our understanding that the fee required for the Petition for Extension of Time is $510.00. The Commissioner is hereby authorized to charge any additional fees required by this response to our Deposit Account No. **50-2613** (Attorney Docket No. 38466.00008.UTL1.P1068).

Respectfully submitted,



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